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No. 07-

IN THE

Supreme Court of the United States

SHAREN and MICHAEL GRAVELLE,

Petitioners,

v.

HURON COUNTY DEPARTMENT OF JOBS AND FAMILY SERVICES and THE CRADLE SOCIETY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SIXTH APPELLATE DISTRICT, HURON COUNTY, OHIO

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Huron County, Ohio Juvenile Court held that the adoptive children of Petitioners Sharen and Michael Gravelle were abused and/or dependent. The Court terminated the Gravelles' parental rights.

Two questions are presented:

1. Can children be declared abused when there is no evidence of physical, emotional and/or psychological abuse, when the only evidence was of "potential abuse" and when there is no statutory definition of child abuse?

2. Can a court terminate parental rights when only a few months have passed between the adjudication of abuse and the state's motion for permanent custody and when the state makes no reasonable effort at reunifying the family?

LIST OF PARTIES

The Petitioners are Sharen and Michael Gravelle. Respondents are the Huron County Department of Jobs and Family Services and the Cradle Society.

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OPINION BELOW

On December 10, 2005, the Huron County, Ohio Juvenile Court ruled in this child custody case that eight of eleven children living in the home of Michael and Sharen Gravelle were abused and all eleven were considered dependent. *In the Matter of Mercy Anne Gravelle, et al.*, Huron County Juvenile Court, Case Nos. DNA 2005-0056-0066. On March 20, 2006, the same court granted permanent custody of all eleven children to the State of Ohio, stripping the Gravelles of their parental rights. On March 14, 2007, the Ohio Court of Appeals for the Sixth Judicial District in Toledo, Ohio affirmed both the abuse/dependency ruling and the permanent custody ruling. *In the Matter of Mercy Anne G., et al.*, Court of Appeals Case Nos. H-06-007-017. On June 20, 2007, the Ohio Supreme Court declined to hear the appeal by the Gravelles. *In re Mercy Anne G.* (2007), 114 Ohio St.3d 1428. See Appendices A-D.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment Due Process Clause.

Parents' liberty interest in raising their children.

> The parents' fundamental liberty interest in the care, custody and management of their children is protected by the Fourteenth Amendment and does not evaporate simply

because they have not been model parents. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair proceedings.

Ohio Revised Code Section 2151.03 (B) and (D)

This section of the Ohio Revised Code purports to define child abuse, but defines it by defining "child endangering" pursuant to Ohio Revised Code Section 2919.22(A) and (B)(4), which are criminal statutes. There is no statutory definition of child abuse, per se, and the appellate courts in Ohio have defined it in a number of different ways.

Ohio Revised Code Section 2151.414

This section of the Ohio Revised Code sets forth the procedures and standards for termination of parental rights. In determining whether to terminate parental rights, the Court must determine, by clear and convincing evidence, that it is in the best interest of the children to be in the permanent custody of the state and that the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parent.

Ohio Revised Code Section 2151.419

This section of the Ohio Revised Code states that prior to a court granting a termination of parental rights, the state mus' prove that it has made reasonable efforts to reunite a family from whom children have been taken.

STATEMENT OF THE CASE

1. This case garnered worldwide news media attention when it first became public. It became known as the "Caged Kids" case and throughout the court proceedings, it has been front-page news, at first because of the allegations that Petitioners Sharen and Michael Gravelle kept their children in cages, and later because of the debate, both legal and sociological, about how adoptions take place, the state's role in approving and supervising adoptions, how families handle adoptive children with severe behavioral problems, the definition(s) of child abuse and the remedies when abuse is found.

Despite the knee-jerk reaction of the public and the Huron County, Ohio governmental system, this case involves complicated and heavily-disputed factual and legal issues that apply to adoptions and allegations of child abuse across the United States. Although in many respects it is factually unique, this case has reverberated throughout the state of Ohio and the country. Social services agencies, foster and adoptive parents, juvenile courts, litigants and the public need to know, with certainty, the definition of child abuse, the difference between legitimate discipline and abuse and the proper circumstances for permanently removing children from their parents.

Further, termination of parental rights cases are of critical importance and, since these cases impact on the Petitioners' constitutional rights to familial association, they should be closely scrutinized.

This Court should hear this case because, behind the glaring headlines lie some serious legal issues, and behind the "Caged Kids" moniker reside eleven children and two parents, whose fate should be decided by the highest court in the land. Both the trial court and the state Court of Appeals unfairly painted the facts of this case and the resultant conclusions create law that is improper and sends an unduly harsh message to adoptive parents and social service agencies who regularly deal with behaviorally challenging children.

2. This case centers around the eleven children of Michael and Sharen Gravelle of Wakeman, Ohio in Huron County, Ohio, which is located about half way between Cleveland and Toledo. Ten of the eleven, ages 3-14 when removed, were adopted by the Gravelles and the eleventh, Mercy Anne Gravelle, age 1 at the time of removal, was in the pre-adoptive custody of the Gravelles. Most of the children have special needs, ranging from Reactive Attachment Disorder (RAD) to Fetal Alcohol Syndrome to Downs Syndrome to AIDS to PICA, a condition which causes the child to eat non-food items. These conditions existed at the time the Gravelles adopted these children, who had all been removed from their birth families due to various problems including heavy drug use by the birth parents, frequent movement, abandonment, domestic violence, physical and emotional abuse, minimal pre-natal medical care, cocaine addiction at birth, severe learning and language disabilities, multiple temporary foster care placements, possible sexual abuse and developmental delays.

As the Gravelle family grew, these conditions manifested themselves in bizarre, extreme behavior. Several of the children would get out of bed at night and roam the house causing trouble; they would set fires in the kitchen, run out of the house, dangle one of the younger children out of a second-story window; sucker-punch a sleeping brother or sister, dig holes in walls, play with electrical wires, eat non-food items such as batteries, and urinate and defecate all over the house, including down heating grates. These behaviors took place mostly at night, after the children were in bed and the Gravelles had gone to bed. This was all going on prior to any enclosures or alarms being installed, and the Gravelles tried numerous methods to control and contain the behavior prior to putting up enclosures on the beds.

As these problems became more and more prevalent, the Gravelles sought help; they contacted Huron County and the various counties from which the children were adopted. They contacted experts, they looked for answers on the Internet. In one instance, two siblings were removed from the Gravelle home, at the request of the Gravelles, when it was discovered that these children were sexually molesting other children in the home. Two other children were sent temporarily to the pediatric psychiatric unit of the Medical College of Ohio for evaluation. Between 1998-2002, employees of the Huron County Department of Jobs and Family Services ("the County") were regularly in the Gravelle home monitoring the adoptions, so the County knew about the behaviors and the Gravelles' interventions.

In approximately 2002, the Gravelles began seeing Elaine Thompson, a licensed independent social worker who had a long career dealing with RAD and Fetal Alcohol children.

Ms. Thompson began seeing Mrs. Gravelle and several of the children and then, for approximately two years, she went to the Gravelle home on a weekly basis, staying for an entire day at a time, counseling the children and Mr. and Mrs. Gravelle and treating the children with a procedure called neurotherapy.

The County knew that Ms. Thompson was the Gravelles' therapist and approved of her treatment plan; Ms. Thompson regularly reported to the County and received payment via the PASSS program, a government aid program available to adoptive parents.

Some time in 2003, the Gravelles began attempting to restrict the children's movement at night; some of the children slept in bunk beds, and Mr. Gravelle put wooden slats around the beds, with a door at the end and an alarm that went off if the child got out of bed in the middle of the night.

The children figured out how to reach through the openings between wooden slats and disarm the alarms, which would then allow them to get out of bed without their parents knowing.

So Mr. Gravelle, in an effort to prevent the children from getting out of bed undetected, placed chicken wire around some of the beds so that the children could not reach through any openings to disarm the alarms. These beds—which were normal bunk beds of normal length—had wooden doors at the end, with alarms that could be set by the parents at night. None of the beds contained locks of any kind. So if a child got out of bed at night, the alarm would alert the parents, who would then go the child's bed to assure that the child was getting out of bed for a proper reason, such as going to the bathroom, and not for improper reasons.

While enclosing the children at night did not resolve any of the behavioral issues on a long-term basis and was not intended to therapeutically address the children's medical, emotional or behavioral conditions, the enclosures did essentially prevent the nighttime marauding in which the children had been engaging, giving the children and the Gravelles a sense of safety.

It is important to note that enclosed beds are regularly used in hospitals to keep patients, both children and adults, from falling out of bed and from wandering.

Also, Ms. Thompson knew about the enclosed beds and testified that she understood the necessity for such measures.

It is also important to note that as of 2003, the County knew about the enclosed beds, and came to the Gravelle home to investigate. No formal investigation was ever opened at that time and no one told the Gravelles that enclosing the beds was in any way improper.

In August and September, 2005, the County investigated the Gravelles and as a result of a falsified search warrant affidavit, on September 9, 2005, the children were removed and placed in the custody of the County amid a storm of local, national and international publicity, which inaccurately portrayed the Gravelles as keeping their children locked in two and one-half by three and one-half feet dog cages, when in fact the enclosures were full-sized bunk beds and there were not locks on the beds, only alarms. Rather than discussing with the Gravelles alternative ways in which the children's behavior could be controlled, the County—despite not seeing any evidence of physical, psychological or emotional abuse at the time of removal and having

deliberately failed to contact Ms. Thompson to see if she knew about the enclosed beds and if she found them to be acceptable—over-reacted by removing the children and filed abuse, neglect and dependency charges against the Gravelles.

The Huron County Juvenile Court eventually found the children to be abused and dependent and granted the County's motion for permanent custody, thus stripping the Gravelles of their parental rights. The Ohio Sixth District Court of Appeals affirmed those judgments and the Ohio Supreme Court declined to review the case.

The Court of Appeals erred in affirming the Huron County Juvenile Court, because 1) the children were not abused and/or dependent; and 2) even if they were properly held to be abused and/or dependent, granting permanent custody to the County was in error because the County did not make reasonable efforts at reunification and permanent custody was and is not in the best interests of the children. In fact, the County removed the children from the only stable, permanent home most of them had known and placed them all in foster care, where many of them have been moved around multiple times since their removal and from which most have little chance at being re-adopted. The Gravelles love their children; but they had to take some unusual measures, including strict disciplinary measures (which were overblown at every turn, to the court, to the sheriff's office, to the news media) to raise these children.

Even if the Gravelles are ultimately found to have abused the children, the conditions have since been corrected, but the Gravelles were never given another opportunity to reunite with their children. Instead, less than four months after removing the children from the Gravelle home, the County

decided to seek permanent custody, and two months after that, the Juvenile Court granted the motion for permanent custody. This is not enough time for either the County or the Court to determine that (assuming abuse had taken place) reunification was not possible or desirable.

REASONS FOR GRANTING THE PETITION

While family law has traditionally been under the jurisdiction of state courts, this Court has from time to time addressed important constitutional and statutory issues raised by family law cases, especially when the rights of parents and children are at stake and when by taking such cases, this Court can clarify the standards and procedures which public child welfare agencies, courts and litigants must use.

For example, in *Santosky v. Kramer*, 455 U.S. 745 (1982), this Court took a case in the same procedural posture as this case, i.e., reviewing a state appellate court when that state's Supreme Court had denied review, and held that in termination of parental rights cases, the "clear and convincing" standard must be used, rather than "preponderance of evidence."

In *Troxel v. Granville*, 530 U.S. 57 (2000), this Court ruled on the issue of grandparents' rights in child custody matters.

In *Lehr v. Robertson*, 463 U.S. 248 (1983), this Court ruled on biological parents' rights to veto an adoption by a step-parent.

In *Palmore v. Sidoti*, 466 U.S. 429 (1984), this Court determined a mother's fitness to parent her child, which fitness had been called into question when she married a man of another race.

I. REVIEW IS WARRANTED BECAUSE THE DEFINITION OF CHILD ABUSE IN OHIO IS UNCONSTITUTIONALLY VAGUE.

Pursuant to Ohio Revised Code (O.R.C.) Section 2151.031(B) and (D), in order to prove abuse, Huron County must show that the children are endangered as defined by O.R.C. 2919.22(A) and (B)(4). Because the Ohio Supreme Court has never defined child abuse and different appellate courts in the state have defined it in different ways, the definition of child abuse is constitutionally void for vagueness in that a litigant cannot know in advance what encompasses child abuse with any certainty.

In *State v. Burdine-Justice* (1998), 125 Ohio App.3d 707, the Ohio 12th District Court of Appeals cited approvingly the definition of child abuse used by the Ohio 8th District Court of Appeals in *State v. Ivey* (1994), 98 Ohio App.3d 249: "Child abuse is defined as 'an act which inflicts serious physical harm or creates a substantial risk of serious harm to the physical health or safety of the child.'" *Burdine-Justice* at 714, citing *Ivey* at 257. The "serious physical harm" language for O.R.C. 2919.22(B)(1) is also accepted by the Ohio 3rd District Court of Appeals (*In re Schuermann* (1991), 74 Ohio App.3d 528); the Ohio 1st District Court of Appeals (*In re Barrett* (1998), 1998 WL 107760); the Ohio 2nd District Court of Appeals (*State v. Bogan* (1990), 1990 WL 80572); and the Ohio 8th District Court of Appeals in *Ivey*, *supra* (in which the Court ruled that a 10-year-old boy's injuries of a bruised left eyelid, bruises, welts and lacerations caused by a disciplinary belt whipping on the buttocks and lower legs, and a swollen hand, did not cause the child serious physical harm or threaten substantial risk of same, thus the sufficiency of the evidence did not support the offense of

child endangering) and *City of Shaker Heights v. Wright* (1996), 1996 WL 355309. Under this definition, there would be insufficient evidence of child abuse to warrant a finding of abuse in this case, as most of the evidence against the Gravelles revolved around "potential harm," rather than "serious physical harm."

The Ohio 6th District Court of Appeals also leans toward the "serious physical harm" definition of child abuse: In *In the Matter of Noftz* (1986), 1986 WL 9098, the Ohio 6th District Court of Appeals outlined a balancing test, weighing the seriousness of the harm against the underlying circumstances.

The *Noftz* court found that any definition of child abuse

> . . . would necessitate the trial court reviewing the totality of the circumstances to determine whether there has been sufficient physical, mental and psychological harm to the child to permit a finding of abuse. . . . In making the determination of abuse, the trial court must look at the circumstances giving rise to the harm to the child, the disciplinary measures employed by the parent, the child's past history and any other potentially relevant factors. Of importance when evaluating the physical harm to a child is whether the nature of the physical harm is warranted based upon the underlying circumstances. Clearly, parents are entitled to utilize disciplinary measures for their children, however such discipline must not be of such gravity that it becomes unreasonable in light of the underlying cause. These factors are necessary for the determination that a child has

> been abused under R.C. 2919.22(B)(1). The same factors would be evaluated pursuant to R.C. 2919.22(B)(3) and (4). See, also, R.C. 2901.01 [this section provides definitions for physical harm to persons, serious physical harm to persons, risk and substantial risk].

Noftz at 4.

After analyzing the facts of the case at hand, the *Noftz* court concluded: "Though we recognize at times there may be instances where a child may be slapped three times, the resulting injury to the child, the circumstances giving rise to the incident, and the *potential serious harm which may have occurred to the child* clearly support the trial court's finding in this case." *Noftz* at 6, emphasis added.

In this case, there was no evidence of serious physical or emotional harm; the state's experts testified that in evaluating the children after their removal, they saw the enclosed beds and Gravelles' discipline as potentially causing emotional or psychological harm. They speculated, based on seeing the children after removal, that the children had to have been harmed, even though they testified that the children seemed, by and large, to be fine. There was not clear and convincing evidence of any type of harm, much less serious physical harm. This Court should accept this case, if for no other reason than to clarify the definition of child abuse.

II. REVIEW IS NECESSARY BECAUSE THE PETITIONERS' PARENTAL RIGHTS WERE TERMINATED IN VIOLATION OF THEIR FUNDAMENTAL FOURTEENTH AMENDMENT RIGHTS AND STATE STATUTES.

Termination of parental rights should only be granted if, after all reasonable efforts are made to reunite a family, it is determined by clear and convincing evidence that it is in a child's best interest to be placed in the permanent custody of the state, and only after enough time has elapsed to assure that the parents cannot or should not be given another opportunity to reunite with their children.

A trial court conducting a hearing on a motion for permanent custody must follow the guidelines set forth in O.R.C. 2151.414. The court may grant such a motion if the court determines by clear and convincing evidence that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion and that the child cannot be placed with either parent within a reasonable time or should not be placed with the parent. O.R.C. 2151.414(B)(1)(a).

When determining what is in the child's best interest, O.R.C. 2151.414(D) mandates that the court consider all relevant factors, including the relationship between the child and the parents; the wishes of the child; the custodial history of the child; the child's need for a legally secure placement and whether that can be achieved without a grant of permanent custody. O.R.C. 2151.414(D)(1)-(4).

In determining whether a child cannot be placed with either parent within a reasonable period of time or should

not be placed with the parents, the court shall consider all relevant evidence, including whether the parents have "failed continuously and repeatedly to substantially remedy those conditions [that led to removal]"; whether the parents have demonstrated a lack of commitment to the children by failing to regularly support, visit or communicate with the child; or whether the parents are unwilling to provide food, clothing and shelter or to prevent the child from suffering physical, emotional or sexual abuse or neglect. O.R.C. 2151.414(E)(1) through (16). If the court determines that one or more of these factors exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

The court must also determine whether the agency filing the permanent custody motion "has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." The agency shall have the burden of proving that it has made those reasonable efforts. O.R.C. 2151.419(A)(1).

In this case, assuming arguendo the propriety of the abuse/dependency rulings, permanent custody is not in the best interests of the children and the County did not made reasonable efforts to prevent the removal or to reunify.

The County cannot meet its burden to prove any of the O.R.C. 2151.414(D) factors: There was, at the time of the permanent custody ruling, continued interaction between the parents and the children and between the children; the wishes of the children do not give clear indication since some want to go home, others don't and still others have changed their

minds repeatedly; the custodial history of the children before their adoption by the Gravelles and since removal indicate that permanent custody would create a substantial risk of continued long-term foster care for most of the children; and they all need a legally-secure permanent placement, which they had in the Gravelle home.

The County also did not meet its burden to prove the O.R.C. 2151.414 (E) factors: There is no evidence that the Gravelles have "failed continuously and repeatedly to substantially remedy the conditions" causing the removal. In fact, the opposite is true; at the time of the permanent custody ruling, they had remedied the physical conditions in the home that led to removal, and had begun the process of remedying the other conditions that were identified during the adjudicatory hearing and by the Court in its December 22, 2006 opinion. The parents had not been able to utilize the services provided by the County, because by and large, no services were offered. The County has never offered financial resources, counseling or any other services intended to assist the parents in "resuming and maintaining parental duties" because the County never really wanted the Gravelles to resume and maintain their parental duties. All efforts by the County were to gather evidence of the Gravelles' unfitness and to create obstacles for the Gravelles. There was no evidence of the Gravelles' failure to regularly visit the children and in fact, the Gravelles tried several times to increase the frequency and duration of the visits and to move them to a more amicable location. Each time, the County opposed these efforts. There was no evidence of the Gravelles being unwilling to provide food, shelter or basic necessities. And there was no evidence that the abuse found by the Court was so serious or likely to recur that placement with the Gravelles would be a threat to the children's safety. Finally, there was no evidence of the County making a reasonable effort to reunify.

As the Ohio 6th District Court of Appeals stated in *In re Brown* (1994), 98 Ohio App.3d 337, 344, 648 N.E.2d 576 in reversing a trial court's grant of permanent custody:

> . . . It is clear, however, that appellee made only minimal efforts to reunify Nichole with her family. The case plan set forth by appellee in this case stated only the most general of goals, and these goals were directed mainly toward altering behaviors of Amy and Marvin Brown. However, the only recommendations in the case plan which related to the parent-child relationship were that the "parents will attend all regularly scheduled visits," and that the "parents will not fight physically or verbally in front of Nichole." Curiously, there is no competent evidence in the record that would suggest that Amy and Marvin Brown maintain any type of relationship with one another, nor that Nichole is or ever has been affected by any altercations between her parents, save some problems which occurred around the time of their divorce approximately nine years ago. As to "regularly scheduled" visitation, it was shown at the hearing that there were never any regularly scheduled visits. Rather, Amy and Marvin were directed to call and set up visits, but no more often than once a week, and for no longer than one hour. Furthermore, these visits were to be supervised by appellee's employees, *in settings totally nonconducive to maintenance or development of close parent-child relations*. . . .

R.C. 2151.419 requires a determination as to whether an agency made reasonable efforts to

> prevent removal or to "make it possible for the child to return home." The court made no such finding in this case. Moreover, based on our review of the record, we find it clear that appellee was not diligent in its attempts to reunite Nichole with either of her natural parents. The assignment of error is sustained.

In re Brown (1994), 98 Ohio App.3d 337,344, 648 N.E.2d 576 (emphasis added).

In this case, the case plans are equally vague, the visitations were equally nonconducive to maintenance or development of close parent-child relations and the County was not diligent in its efforts to reunify.

The County made a decision, by consensus, to seek permanent custody as of early December, 2005, less than three months after removal and prior to the adjudicatory hearing. Yet they gave the Gravelles and the trial Court a phony case plan on December 30, 2005 calling for reunification and then filed a new case plan six business days later calling for permanent custody, citing the Gravelles' lack of cooperation as a prime reason.

It would have been difficult for the Gravelles to completely cooperate with the case plan from the time it was filed on October 7, 2005 since at that time they were fighting the allegations of abuse, neglect and dependency and the case plan called for them to acknowledge the abuse. Had they won that battle, following a case plan would have been unnecessary. Once the Juvenile Court issued its abuse and dependency ruling on December 22, 2005, the Gravelles had only three weeks, from December 22, 2005 until January 11,

2006, when the last case plan was filed, to cooperate with the October 7 case plan, and even that would have been futile because the decision was made by the County in early December, 2005, to seek permanent custody.

It is unfair to equate the Gravelles' actions between removal on September 9, 2005 and the abuse/dependency ruling on December 22, 2005 with parents who stipulate to abuse, neglect or dependency. The Gravelles had every right to deny those charges and to fight them. To expect them to in essence admit to abuse and accept a case plan while at the same time fighting those very same charges would be unrealistic and unfair. It is similarly unfair to hold them responsible for "lack of cooperation" with a case plan prior to the date of adjudication, December 22, 2006.

Of course unbeknownst to the Gravelles, even prior to the adjudicatory hearing, the County had decided to move for permanent custody. So no matter what the Gravelles did to cooperate after the adjudicatory hearing decision, it would not have mattered. By the time the Gravelles began following the road map provided by the Court on December 22, 2005, i.e., deconstructing the beds, beginning the process of getting psychological evaluations, getting counseling, etc., the County had already pulled the plug.

Rather than trying to help the Gravelles get their kids back, the County, from the very beginning in September, 2005 and certainly from at least the beginning of December, 2005, was acting in furtherance of its real goal, to get the kids away from the Gravelles permanently. The whole notion of reunification was a sham. The County wanted the Gravelles and the Juvenile Court to think reunification was the goal when in reality, permanent custody had been the goal from

as early as the first week in December, 2006. All testimony aimed at proving the Gravelles were uncooperative or lacking in parenting skills at visitations should be seen in this light.

Rather than help the Gravelles by offering resources, either financial or psychological, the County focused on building a case against the Gravelles, both juvenile and criminal, both before and after removal. Every contact between the Gravelles and the County has been monitored, recorded and noted, with the goal of using all information to testify against them. Nothing was done to help them reconfigure their home; nothing was done to help them cope with the loss of their children; nothing was done to encourage the children to believe they would soon be coming home; nothing was done to encourage or foster ongoing contact and bonds between parents and children; nothing was done to keep the Gravelles informed of medical issues, school issues or living arrangements. Visitations were used as evidence against the Gravelles, rather than as opportunities to help the Gravelles and the children. The County used the news media and planted lies and distortions, then turned around and blamed the Gravelles for using the news media to respond. The County is the entity with constitutional and statutory responsibilities. Instead of providing the Gravelles with the resources, financial and medical, that they might have needed to come into the County's view of compliance, the County paid the foster parents twice as much in subsidies as the Gravelles were receiving in post-adoption subsidies (not to mention mileage reimbursements, clothing allowances and school fees), giving the foster parents raises when the foster parents complained. Instead of giving the Gravelles access to psychologists and social workers, the County gave the foster parents, in essence, 24-hour hotlines to social workers and psychologists for help with day-to-day

behavioral problems the children were having. The foster parents got respite care and transportation to and from medical appointments. Had the County offered even some of those services to the Gravelles, either in years past when the Gravelles called for help, or at the time of (and instead of) removal, the children could have stayed at the Gravelle home and the situation causing concern could have been remediated. That would have been in the best interest of the children rather than ripping them from the only home they had known and placing most of them in what could be an endless cycle of foster care.

These children had been abused and neglected from birth, which is why they were up for adoption. The Gravelles adopted them and gave them a home when literally, no one else would take them. Now, if the state appellate court's order stands, they will have to be adopted all over again. And most of them will be even harder to place than they were when placed with the Gravelles, due to their ages.

The social workers acknowledged the difficulty in adopting out most of these children, and the foster parents acknowledged that they probably will not adopt these children. So what is their future? Not only does no one know, but no one seems to care. The testimony of the social workers was that it really didn't matter if the kids get adopted or end up in long-term foster care; anything is better than going back to the Gravelles. After such a short period of time, this cannot be in the best interest of the children and this cannot be the intent of the statute that requires a county agency to make reasonable efforts to reunify families.

The County has an obligation to plan for the children's futures at the point of moving for permanent custody.

According to the Ohio Administrative Code, "[a]t the time a motion is filed with the court to obtain permanent custody of the child, the PCSA (Public Child Services Agency) . . . shall submit a case plan to the court which includes a specific plan to seek an adoptive family or planned permanent living arrangement for the child and to prepare the child for adoption or permanency with a specified individual." OAC Ann. 5101:2-42-95(D).

The County is in violation of that provision: In the January 11, 2006 case plan, on page 10, under the heading, "Documentation of Efforts for Permanency:" the case plan instructs as follows: "For a child who is in the custody of the agency and whose goal is adoption or a planned permanent living arrangement, the agency must document the steps it has taken to locate a permanent living arrangement." It then says: "Document steps taken to find an adoptive home, relative, legal guardian or other permanent placement for the child." The County's answer in the case plan is: "The agency will be filing a motion for permanent custody." The case plan then says: "Describe the child-specific recruitment activities by the agency and the outcomes." The agency answered: "The agency has completed a home study on an interested relative."

This falls far short of the requirements of the Ohio Administrative Code and indicates a lack of planning by the County and hence, why granting permanent custody would be an error.

From December 22, 2005, when the trial court's opinion was issued on adjudication, until February 22, 2006, when the dispositional hearing began, the Gravelles made every effort to comply with court orders; they reconfigured the beds, repaired a hole in a wall, changed smoke detector batteries,

fixed a doorway to one of the bedrooms; they started the process of getting a psychological examination with a clinician at their own expense; they began parenting classes; they attended visitations and asked for more; they allowed County employees into their home on several occasions; they refrained from talking about specifics of the case to the news media; they did not talk about the case to the children. In two months, they did more to achieve reunification than many families do in a year.

In other Ohio cases in which grants of permanent custody have been upheld, the circumstances were much more serious and long-standing, the agency attempts at reunification were much more obvious, parental lapses more pronounced and the time frames given to the parents prior to permanent custody being requested were much longer.

Conversely, in cases in which the Ohio courts have overturned grants of permanent custody, it is because of conduct by agencies much like what happened here or in cases in which the conduct of the parents is much more egregious than that displayed by the Gravelles.

For example, in *In re: K.S.*, the child at issue had already been removed from the home once because of neglect. The child was taken to a hospital after swallowing Pine-Sol and it was discovered that the child had bruises all over her body and had evidence of shaken baby syndrome. The child was adjudicated abused and dependent and placed in the temporary custody of the county. Nine months later, the county moved for permanent custody and four months later the parent moved for a six-month extension of temporary custody, which was granted by the court on the grounds that the parent had made significant progress in the case plan.

Six months later (now 17 months after the filing of the complaint) the parent moved for another six month extension and four months after that the trial court granted permanent custody.

In reversing the trial court's grant of permanent custody, the appellate court said:

> The Court has carefully considered the evidence presented upon the question before us. Cases involving the termination of parental rights are, by nature, difficult and of critical importance. This case is particularly difficult because of the conflicting and — in some cases — problematic — opinions expressed by the witnesses, the needs of the child and the limited opportunity of appellant to demonstrate her ability to provide care for the child. But the termination of parental rights requires clear and convincing evidence that it is in the best interest of the child. This Court is convinced that such a conclusion has not been sufficiently supported by clear and convincing evidence in the present case. Based upon the record before this Court, this Court concluded that appellant's second assignment of error is sustained.

In Re: K.S., 2004 Ohio App. LEXIS 2370 (Ninth Dist. App., May 26, 2004) at 38.

In that case, despite a prior history of the child having been removed, despite serious medical evidence of abuse, despite a long period of time elapsing between the filing of the complaint and the permanent custody hearing, the

appellate court ruled that the parent had not been given enough of an opportunity to demonstrate her ability to care for the child and that there was conflicting testimony as to the best interests of the child.

In this case, at the time of the hearing, it had only been five months since removal, four months since the first case plan, two months since the abuse/dependency ruling and a little over one month since the permanent custody filing. The Gravelles were not given a reasonable opportunity to comply with case plan, regardless of which case plan is used.

Another instructive case came from the Ohio Sixth Appellate District. In *In the Matter of Rashaun B.*, the appellate court reversed a grant of permanent custody. The child in that case had been removed based on the parent's alleged mental issues and because the child had allegedly been shaken. More than one year later, the county moved for permanent custody, by which time the parent had completed anger management classes, parenting classes and was enrolled in a GED class.

The court said:

> The right of a family to remain intact is constitutionally protected. *Stanley v. Illinois* (1972), 405 U.S. 645 (additional citations omitted). Judicial decisions terminating parental rights are carefully scrutinized. Permanent removal may be condoned, "only where there is demonstrated an incapacity on the part of the parent to provide adequate parental care, not better parental care, should parents be deprived of custody." *In re Lay* (1987), 43 Ohio App. 3d 78,82,

> 539 N.E.2d 664 (additional citations omitted). "Before any court may consider whether a child's best interests may be served by permanent removal from his or her family, there must first be a determination that the parents are 'unfit.'" *In re Stacey S.* (1999), 136 Ohio App. 3d 503, 516, 737 N.E.2d 92, citing *Quilloin v. Walcott* (1978), 434 U.S. 246.
>
> In Ohio, the equivalent of parental unfitness for a child who is not abandoned or orphaned is a statutory determination that the child, ". . . cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. . . ." R.C. 2151.414(E). To reach such a conclusion, the court must find by clear and convincing evidence that at least 1 of the 16 predicate conditions enumerated in R.C. 2151.414(E)(1) through (16) exists. Such a determination must be made antecedent to any "best interests" analysis. *In re Stacey S.*, supra at 517 (additional citations omitted).

In the Matter of Rashaun B., 2004 Ohio App. LEXIS 6812, Sixth Dist. App., September 22,2004 at 8.

The court went on to conclude that the trial court's findings were not only unsupported by the record, but contradicted by it. Further, the court held that the county had not met its burden to prove by clear and convincing evidence that the parent had failed to substantially remedy the condition which caused the children to be removed from the home. *Id.* at 13.

There are numerous other cases in which Ohio appellate courts have reversed trial courts' grants of permanent custody or where a grant of permanent custody was affirmed where facts and circumstances were much more egregious than those at issue in the present case. These cases include: *In the Matter of Joseph Knuckles*, 2003 Ohio App. LEXIS 3926, Ohio 12th Dist. App., August 21, 2003; *In the Matter of: Jason Caine and Loretta Whyde*, 2004 Ohio App. LEXIS 2035, Ohio 5th Dist. App., March 6, 2004; *In re: Myers*, 2004 Ohio App. LEXIS 951, Ohio 4th Dist. App., March 4, 2004; *In the Matter of: Ashley Thomas*, 2003 Ohio App. LEXIS 5230, Ohio 3rd Dist. App., November 3, 2003; *In the Matter of Katelyn Lewis*, 2003 Ohio App. LEXIS 4763, Ohio 4th Dist. App., September 25, 2003.

When seen in the context of cases both where permanent custody was granted and where permanent custody was reversed, several things become clear; 1) the County did not meet its responsibility to attempt to prevent the removal of the Gravelle children; 2) it was too early in the process to rule that the Gravelles were unfit; 3) it was too early in the process to determine that the best interests of the children could only be served by a grant of permanent custody; 4) the Gravelles should have been given more time to demonstrate their ability to adequately parent these children; 5) the County did not meet its statutory burdens; 6) the County did not make reasonable efforts to reunify nor did it seek a waiver; 7) the evidence of both the Gravelles' unfitness and the best interests of the children is contradictory and does not support a finding of permanent custody; 8) as a result of the foregoing, the Gravelles' Fourteenth Amendment rights to due process involving their familial relations was violated.

This case should be reviewed by the Supreme Court in order to correct the mistakes made by the state courts.

CONCLUSION

For the reasons stated above, Petitioners respectfully request that the Supreme Court grant review of this matter.

Respectfully submitted,

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